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# Critical Analysis of Fixation of Compensation under Law of Torts

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ANUSHKA JOSHI<sup>1</sup> AND ANISHA AGARWAL<sup>2</sup>

## ABSTRACT

*The law of tort is defined under Section 2(m) of the Limitation Act, 'tort means a civil wrong which is not exclusively the breach of contract or the breach of a trust'. This article provides an overview of the fixation of compensation or remedies provided under the law of torts. Any legal recourse without remedy is fruitless. Anyone approaching the court with injury expects some sort of remedy or compensation for the damages that occurred. The main aim of providing remedies to the aggrieved party is to take them back to the position that they appreciated before the happening of the tort. In torts, fixation is done in the form of monetary compensation for the damages caused to the aggrieved party. The present article puts light on various damages and their remedies along with their types and their justifications. The main motive of this article is to make an individual aware of the remedies available to him for the damages that occurred to him. It also includes the question of whether there is any room for improvements in the current method followed in India. As we know, the tort is evolving from time to time according to our needs, so this article also includes the writer's point of view along with a conclusion and bibliography. This article focuses on the core areas of fixation of compensation under torts. It also includes judicial precedents related to the topic, which describe the topic in depth.*

**Keywords:** *compensation, remedies, fixation of compensation, torts, monetary compensation, law of torts.*

## I. INTRODUCTION

Any matter involving legal duties and rights and any infringement of such rights and duties occur remedies are provided to maintain peace and justice in society. These remedies can be in the form of compensation given to the person who has suffered losses due to right infringement. In the law of torts, a remedy is generally provided in monetary form.

## II. DEFINITION OF TORTS LAW

Tort is a legal wrong which is of civil nature and is not a criminal offence. Tort is a private wrong where the aggrieved party claims for monetary compensation from the wrongdoer. The

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<sup>1</sup> Author is a student at Amity Law School, Amity University, Rajasthan, India.

<sup>2</sup> Author is a student at Amity Law School, Amity University, Rajasthan, India.

aggrieved party can sue the other party for the damages suffered. Everyone has the right to enjoy law but with rights comes the duties. If anyone violates the rights of others while enjoying his rights and without fulfilling his duties, then a tortious liability arises. Compensation paid to the party that suffered the loss is in the form of unliquidated damages. These damages are not pre-decided and are decided by the court depending upon the gravity of the offence.

According to Jurist Salmond, “*civil wrong for which the remedy is a common-law action for unliquidated damages and which is not exclusively the breach of contract or the breach of a trust or other merely equitable obligation*”.

The main aim of tortious remedies is to the aggrieved party is to take them back to the position that they were appreciating before the happening of the act/offence.

### III. REMEDIES UNDER LAW OF TORT

A legal remedy is one similar treatment to violation of a parties right which is treatable by law. A party is said to be aggrieved when something that they have been enjoying is taken down by another party. There are numerous legal options available. For instance, if any commodity that belongs to you has been taken down by party B. The court can either asks them to return it to you or pay it back in monetary terms and may also discipline the party in some cases.

Types of legal remedies available are:

Judicial remedy

Judicial remedy are the bones that are handed by court of law.

- **Damages:** Damages are the monetary amount to be paid to the displeased party to bring them back to the position they are ahead. They are paid to the complainant for the loss they have suffered. They are the most common remedy under torts law.
- **Injunction:** An injunction is a remedy that is granted by law of land that restricts the commission of a wrong threatened or a continuance of a unlawful course of action formerly begun. If a party fails to comply with an injunction granted by law of land, then the party could face civil or criminal penalties. An injunction may be required or prohibitory, temporary, or permanent. According to section 37 of the act there are two types of injunctions temporary and perpetual.

(1) **Temporary injunction:** In temporary injunction it is done to restrain the party from temporarily doing the act that he/she has been doing. To keep the party from suffering damages while the case is in court, a temporary injunction is granted.

- (2) Permanent injunction: A permanent or perpetual injunction is granted by the court when both of the parties have been heard and the court passes a decree. That is, the defendant cannot now continue doing unlawful acts.
- (3) Mandatory injunction: When the court has ordered a party to perform something, so that the aggrieved party can come back together to the position he/she was in before the commission of the act.
- (4) Prohibitory injunction: When the court has asked a party to not do something or refrain them from performing certain acts or tasks that are wrongful, it is called prohibitory injunction.
- Extra judicial remedies: When the person can lawfully avoid or remedy himself without the intervention of courts, those remedies are called extra judicial remedies. There are five types of extra-judicial remedies.
- Exclusion of trespasser:

A person who owns any immovable property lawfully has right to dismiss any intruder. He can use genuine and reasonable force to banish the trespasser.

- Re-entry on the land:

A person whose land has been expelled wrongfully then he has right to take ownership of land back. He can use reasonable force to take back possession of land.

- Re-capture of goods:

A person whose goods have been snatched from his ownership wrongfully has the right to regain possession.

- Distress damage Feasant:

The term distress damage feasant refers to holding the object which has performed a wrongful act due to which a person has suffered a loss.

It is a remedy by which the complainant has right to detain the object or cattle which has entered his owned land and did damages. He can seize cattle or objects till he receives damages from the owner.

Complainant must take care of detained cattle or objects.

- Abatement of nuisance

The injured party holds the right to eliminate any nuisance nonviolently without any danger to life, property, or person.

In this article we will briefly discuss about fixation of compensation as remedy in depth.

#### IV. DAMAGES

Damages are generally referred as a procedure of fixation in the monetary mode by the person at fault and offers it to the victim. Damages are usually described with the help of two legal maxims:

##### a) **INJURIA SINE DAMNO**

It means legal injury without any physical damage. The main damage in such a situation is violation of legal right then the person has right to bring an action against the person who violated his right.

This maxim refers to the fixation of damages in violation of legal rights of any person. For example, if a person is wrongfully imprisoned then he has the right to call for an action even if he has not suffered any damages. *Ashby vs. White* 1703 KB<sup>3</sup>

Facts of the case

1. Ashby, a cobbler, the plaintiff a resident of Aylesbury was prohibited from exercising his right to vote by Mr. White, a constable, the defendant, claiming that Ashby is not a firm resident of the city.
2. Ashby repudiated to admit and said that he is registered voter. Ashby claimed for damages from Mr. White.

*Ratio decidendi: Every man has a right to vote. The financial status of a person cannot decide a person's right to vote. A person's right to vote has been stated in the laws as well as the constitution. It cannot be taken away by any official due to illegitimate reasons. The right of voting does not vary from any other right and must be given equal importance. When there is a right, there is a remedy. Though no monetary charges existed, charges for violating a legal right were present. Hence the court held Mr. White for the same.*

##### b) **DAMNUM SINE INJURIA**

It refers to no legal injury, but the complainant has suffered actual damages. No legal right gets violated. For example, in the case of Gloucester Grammar School<sup>4</sup>, the defendant was a teacher in a Gloucester Grammar School. The defendant decided to open a new school just neighbouring to his former boss's school i.e in the locality of Gloucester Grammar School. The defendant

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<sup>3</sup> (1703) 92 ER 126

<sup>4</sup> (1410) Y.B. 11 Hen. IV of 47

lowered his new school's fee to 12 pence. Since, the new school's fee was less than the previous school, many students enrolled the new school. This resulted in monetary losses to Gloucester Grammar School.

The complainant, the titleholder of the Gloucester Grammar School decided to bring a suit for recovery of damages against the defendant claiming that opening of new school in the locality of his previous school caused him pecuniary losses and that he should be compensated for the damages caused.

*Judgement: The court held that Gloucester Grammar School has no case against the defendant as they have suffered damages, but no legal right of the petitioner was injured. And this is merely a case of business competition between Gloucester Grammar school and the new school.*

### **(A) KINDS OF DAMAGES**

Damages in laymen language is the sum of the money that the complainant is eligible to receive for the losses or injury suffered due to the wrongful act performed by any person. Damages are of following types:

1. Contemptuous Damages
2. Ordinary Damages
3. Nominal Damages
4. Aggravated Damages
5. Exemplary Damages
6. Prospective Damages

### **CONTEMPTUOUS DAMAGES**

These damages are granted when the issue is very insignificant in nature and the complainant should not have approached to the court for the same. These damages are usually referred as derisory. In these damages, the plaintiff may have suffered slight loss but he is not completely liable to receive the compensation.

For example, Arun's neighbour's pet was playing and while playing he entered Arun's Garden and he relieves himself. Rakesh steps into dogs faeces and is disgusted and sues Arun for trespass and failing to control his dog.

Case law – In the case of *Ashby V. White*<sup>5</sup> Plaintiff Ashby is an Aylesbury inhabitant. Mr.

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<sup>5</sup> (1703) 92 ER 126

White, a police officer (defendant). Ashby was denied the opportunity to exercise his "Right to Vote" by White, who claimed that Ashby wasn't a permanent resident. Ashby insisted that he was a registered voter and rejected it. Mr. White was sued by Ashby for alleged damages.

The court held that even though the plaintiff received no physical harm, the court ruled that *injuria sine damnum* would still apply because there was a violation of legal rights.

Additionally, according to *ubi jus ibi remedium*, when legal rights are violated, a remedy must be provided.

### **ORDINARY DAMAGES**

These damages are those damages that arise from the normal course of business due to breach of contract. Damages arising from natural calamities or disaster are also considered in the ordinary damages. Generally, they are awarded to compensate the affected party and its intentions was not to punish.

For example, A contracts to pay Rs.5, 000 to B on a specified day. He does not pay the money on that day. On that day, he does not make the payment. As a result, B is completely bankrupt and unable to pay his debts. A is not liable to make good to B anything except the principal sum he contracted to pay together with interest upto the day of payment.

### **NOMINAL DAMAGES**

These damages are those damages in which the civil rights of petitioner Is violated but there is no actual harm. For instance, in the case of trespass no damage has being done but still there is a violation of legal right.

Case law - *Imperial London Hotels Ltd.*<sup>6</sup>, in the case of Constantine Cricket player from the West Indies, the plaintiff was turned away from the defendant hotel because of his nationality; as a result, the plaintiff remained at another hotel and suffered no actual harm. He filed a lawsuit against the defendant, who was found responsible for violating the plaintiff's legal rights even though there was no actual harm done and was ordered to pay nominal damages of five guineas.

### **AGGRAVATED DAMAGE**

These damages are provided in such cases when there is an emotional harm or distress to feelings brought on by the way or intent with which a wrong was done or by the defendant actions after the wrong, particularly in such torts like assault, false imprisonment or defamation.

For example, Rajan makes false allegation against the CR of the class who is Naman, here due

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<sup>6</sup> (1944) KB 693

to false allegation naman's standing in the society has been greatly affected and is ridiculed by people making him losing his self-confidence. Here court can award Naman aggregated damages for the humiliation and disrespect because of his suffering which is caused by Rajan's act.

### **EXEMPLARY DAMAGES**

These damages are given to punish the defendant and serve as a lesson to others, this kind of damages is given. In certain situations, the monetary award surpasses the actual loss incurred by the party who was wronged. The 7th Circuit Court of the United States noted in *Mathias v. Accor Economy Lodging, Inc.*<sup>7</sup> that one of the purposes of Exemplary or Punitive damages is to take some strain off the criminal justice system by way of offering a Civil option to minor crimes. Additionally, it was noted that such damages restrict a tortfeasor's capacity to make money from illegal activity.

### **PROSPECTIVE DAMAGE**

These damages that, at the time the court is deciding on damages, are anticipated to result from the defendant's wrongdoing but have not yet materialised.

### **MEASURE OF DAMAGE**

The maxim that helps in deciding damages is "restituito in integrum".

Case law: *Shafiq v. Pramod Bhatia*<sup>8</sup>. In this case, the plaintiff was unable to conduct his business of door-to-door salesman as an accident caused him 50% disability and his limb got shortened by an inch. The MP court court granted him eighty four thousand as compensation with to intention to put him back to position he was in before the accident.

### **DOCTRINE OF REMOTENESS OF DAMAGE**

According to this, if the victim wants to claim for damages then there should be a direct link between the act that caused harm and the damage. When there is absence of direct link, the plaintiff cannot claim for damages. It is based on the legal maxim "injure on remote causa sed proxima spectator".

Case Law: *Overseas Tankship Ltd. v. Morts Docks & Engineering Co*<sup>9</sup>. (Wagon Mound Case). In this case defendant was the owner of the ship and the plaintiffs were the proprietors. Due to absence of care by the defendant, a spark emerged and led to fire in the floating cotton waste further causing damage the wharfs and ships owned by the plaintiff.

## **FORMS OF DAMAGES**

**Liquidated damages:** Sec 74 deals with the liquidated damages. In these cases when parties agree to pay certain monetary amount to each other arising from the breach of contract, such provisions are created in contract they are called liquidated damages. Thus, there should be a breach of contract in order, so that plaintiff can receive the claim for injury or damage caused. There is compensation guarantee in the event of liquidated damages since an adequate compensation amount is chosen. Therefore, it would be expected that damages would already be defined because the likelihood of a party creating a violation would be smaller.

**Unliquidated damages:** Sec73 deals with the unliquidated damages. In these cases the actual damages brought on by contract violations and the harm brought on by such violations, which are in the form of unliquidated damages because such damages are awarded by the courts based on an assessment of the loss or harm brought on to the party against whom the violations occurred.

## **DAMAGES FOR NERVOUS AND MENTAL SHOCK**

Nervous shock is the beginning of a mental disorder brought on by observing another's reckless behaviour or its results. For the goal of winning a lawsuit, it must be defined as something other than grief or despair, i.e., a true mental condition.

Law of torts protects the rights of an individual. It is a legal process that has been evolved via case law, and the rules of evidence are relevant. Tort law deals with the civil wrong and in which compensation is being directed by court of law. By paying out damages in order to restore the parties' relationship to the way it was before the harm, it safeguards the equality between people. The rule of nerve shock is based on the idea that because the nervous system, a fundamental component of the body, controls the body's functions, if the nervous system experiences an acute shock that impairs those functions, the body cannot function normally. It is an obvious "bodily harm." It is crucial to remember that causing nervous shock by itself does not qualify as a tort; instead, there must be a harm or disease brought on by emotional distress, dread, or sadness. A plaintiff must establish each of the following elements of the negligence tort in order to be awarded damages for nerve shock brought on by the defendant's conduct: 1) There is a duty of care; 2) There has been a violation of that duty; 3) There is a causal relationship between the breach and shock; and 4) Shock was not an improbable result.

## **V. CONCLUSION**

Torts are civil wrongs that can be addressed through the legal system by the party that was

harmful. The injured party has the right to sue for "unliquidated damages" in tort cases, which are determined by the judge of the court based on the facts, circumstances, and severity of the injury actually sustained by the injured party. Tort law is largely based on common sense and the understanding that people have while interacting with one another on a daily basis. To ensure that people can live together peacefully, tort law was created. There are two parties engaged in a tort case: the plaintiff and the defendant. The party who claims their rights have been violated is the plaintiff. In India, tort law is still in its infancy. However, the people now have physical security thanks to tort law. "Common law allowed tort law to develop. In the past, common law fundamentals were used to address legal issues. An effort to systematise tort law was made in the nineteenth century.

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